

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 VILAY SIRIPHONE dba IKE'S) Case No. 07-CV-1656-L (JMA)
12 TRANSMISSION AND CLUTCH,)
13 Plaintiff,) **ORDER GRANTING MOTION TO**
14 v.) **COMPEL DEPOSITION OF JEAN**
15 ACCEPTANCE INDEMNITY INSURANCE) **SIRIPHONE**
16 COMPANY, et al.,)
17 Defendants.)
18 _____)
19

[Document No. 35]

20 On June 19, 2008, Defendant Acceptance Indemnity Insurance
21 Company ("Acceptance") filed a Motion to Compel Deposition of
22 Jean Siriphone ("Motion"), a third-party witness who failed to
23 appear after having been served with a "Subpoena in a Civil Case"
24 ("subpoena") in this action. Ms. Siriphone filed no objection to
25 the subpoena and no opposition to the Motion. Because Acceptance
26 has shown that it complied with the requirements of Fed. Rule
27 Civ. Proc. 45 in serving the subpoena on Ms. Siriphone, and
28 because Ms. Siriphone has failed to present an adequate excuse
for not obeying the subpoena as provided by the Federal Rules of

1 Civil Procedure, the Court **GRANTS** Acceptance's Motion and **ORDERS**
2 Ms. Siriphone to appear for her deposition in this case.

3 This is an action for bad faith concerning the handling of
4 the claim of Plaintiff Vilay Siriphone dba Ike's Transmission &
5 Clutch for first-party coverage benefits arising out of a theft
6 which occurred on May 12, 2005, at the insured premises.

7 (Declaration of Tod M. Castronovo in Support of Motion [Doc. No.
8 35-2] ("T.M.C. Decl.") at ¶ 2; See Notice of Removal [Doc. No.
9 1], Exhibit A at pp. 7-13 (Complaint).) On January 31, 2008,
10 Acceptance served a Notice of Taking Deposition of Jean Siriphone
11 for March 24, 2008. (T.M.C. Decl. at ¶ 4; Exhibits in Support of
12 Motion [Doc. No. 35-4] ("Exhibits") at Exh. A.) On March 24,
13 2008, as counsel for Acceptance traveled to Carlsbad to take Ms.
14 Siriphone's deposition, he received a telephone call from
15 Plaintiff's counsel, Andy Van Le, advising that Ms. Siriphone was
16 ill and would not appear for her scheduled deposition. (T.M.C.
17 Decl. at ¶ 5.)

18 On April 27, 2008, Acceptance caused Ms. Siriphone to be
19 served with a subpoena issued by this Court, requiring her to
20 appear for her rescheduled deposition on May 20, 2008. (Exhibits
21 at Exh. B.) When Ms. Siriphone was served with the subpoena, she
22 advised the process server that she would not appear for her
23 deposition. Ms. Siriphone did in fact fail to appear for her
24 rescheduled deposition on May 20, 2008. (T.M.C. Decl. at ¶ 7;
25 Exhibits at Exh. C.)

26 On May 21, 2008, counsel for Acceptance, Mr. Castronovo,
27 mailed a letter to Ms. Siriphone, giving her one last opportunity
28 to comply with the subpoena before he filed this Motion. (T.M.C.

1 Decl. at ¶ 8; Exhibits at Exh. D.) Mr. Castronovo received no
 2 response from Ms. Siriphone. (T.M.C. Decl. at ¶¶ 8-9.) On June
 3 5, 2008, Mr. Castronovo spoke with Mr. Van Le to determine
 4 whether he had the ability to produce Ms. Siriphone for her
 5 deposition. Mr. Van Le informed him that he had no such ability
 6 and further informed Mr. Castronovo that Ms. Siriphone's doctor
 7 had indicated that her health did not permit her giving a
 8 deposition at that time. (Id. at ¶ 10; Exhibits at Exh. E.) By
 9 facsimile dated June 6, 2008, Mr. Castronovo received a letter
 10 from Ms. Siriphone's doctor stating that Ms. Siriphone's
 11 deposition could be taken sixty (60) days after May 20, 2008.
 12 (T.M.C. Decl. at ¶ 11; Exhibits at Exh. F.)¹

13 Acceptance contends that Ms. Siriphone's deposition is
 14 necessary because she is a percipient witness to one of the
 15 central issues in this action, that is, Plaintiff's report to the
 16 San Diego Police Department regarding the value of the tools
 17 allegedly stolen from his automotive garage. At the time of the
 18 alleged theft, the tools were valued at approximately \$1,700;
 19 now, the alleged value is in excess of \$100,000. (T.M.C. Decl.
 20 at ¶ 12.) Additionally, Ms. Siriphone has percipient knowledge
 21 of Plaintiff's claim that he lost his business because of the
 22 manner in which the claim was adjusted, and Plaintiff contends
 23 that the manner in which the claim was adjusted resulted in Ms.
 24 Siriphone divorcing Plaintiff. (Id. at ¶ 13.) Moreover, Ms.
 25 Siriphone's deposition is necessary because she was the contact
 26 person for all dealings with the insurer and adjuster during the

27
 28 ¹Curiously, Dr. Trung Quy Tran's "Medical Certificate," a hand-
 printed note on his/her letterhead, is dated "October 30th, 2008."
 (Exhibits at Exh. F.)

1 adjustment of Plaintiff's insurance claim. (Id. at ¶ 14.)

2 Pursuant to Fed. Rule of Civ. Proc. 45(a)(2)(B), a subpoena
3 to depose a nonparty witness "must issue ... from the court for
4 the district where the deposition will be taken." Defendant
5 complied with the federal rule in issuing and serving the
6 subpoena on Ms. Siriphone in this case. (See Exhibits at Exh.
7 B.) The subpoena form advised Ms. Siriphone of her rights
8 concerning the subpoena, and specifically informed her that:

9 **Failure of any person without adequate excuse to obey a**
10 **subpoena served upon that person may be deemed a**
11 **contempt of the court from which the subpoena issued.**
12 An adequate cause for failure to obey exists when a
13 subpoena purports to require a nonparty to attend ...
at a place not within [100 miles of home or business].

14 (Fed. Rule Civ. Proc. 45(e)(emphasis supplied); Exhibits at Exh.
15 B). Ms. Siriphone filed no objection to the subpoena and took no
16 action other than transmitting to Mr. Castronovo, through Mr. Van
17 Le, the letter from Dr. Trung Quy Tran indicating that she would
18 be medically cleared to attend her deposition anytime after July
20, 2008.

19 In light of the foregoing, the Court **ORDERS** the following:

20 (1) Mr. Castronovo shall cause this Order to be served on
21 Jean Siriphone **not later than August 8, 2008;**
22 (2) Jean Siriphone shall appear for her deposition on a
23 mutually agreed-upon date among herself, Mr.
24 Castronovo, and Mr. Van Le (or their offices), but in
25 no event shall Jean Siriphone appear for her deposition
26 after **August 29, 2008** absent further order of the
27 Court;

28 //

(3) The Court requests that Mr. Van Le assist Mr. Castronovo in securing Jean Siriphone's attendance at her deposition by telephoning her and explaining to her the potential consequences of a finding of civil contempt of court.

Jean Siriphone is strongly cautioned that failure to comply with this Order and appear for her deposition may result in a finding of civil contempt of court, which can carry with it a monetary fine in the form of a judgment against her. (See 18 U.S.C. § 401.)

IT IS SO ORDERED.

DATED: July 31, 2008

Jan M. Adler
Jan M. Adler
U.S. Magistrate Judge